TR & SNF, INC. d/b/a The Nursing Center at University Village and TALF, Inc. d/b/a The Inn at University Village *and* 1199 SEIU, United Healthcare Workers East, Florida Region. Case 12–CA–170290

November 29, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by 1199 SEIU, United Healthcare Workers East, Florida Region (the Union), on February 23, 2016, the General Counsel issued the complaint on June 30, 2016, against TR & SNF, Inc. d/b/a The Nursing Center at University Village and TALF, Inc. d/b/a The Inn at University Village (collectively, the Respondent), alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. On July 22, 2016, the Respondent filed an answer to the complaint.[1]

Subsequently, the Respondent and the Union executed an informal settlement agreement, which was approved by the Regional Director for Region 12 on March 7, 2017. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to (1) upon request of the Union, rescind the health insurance benefits changes that were implemented on October 1, 2015, and restore the preexisting benefits; (2) reimburse, with interest, the employees named in the Appendix to the settlement agreement for medical expenses incurred as a result of the Respondent's unilateral changes to their health insurance; (3) bargain with the Union and put in writing and sign any agreement reached with respect to wages, hours, and other terms and conditions of employment for the unit employees; and (4) post at its Tampa, Florida facilities the approved notice in the manner prescribed in the settlement agreement.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the Complaint previously issued on June 30, 2016 in case 12–CA–170290. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned Complaint will be deemed admitted and its Answer will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find the allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on those issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

By letter dated March 13, 2017, the Region advised the Respondent of the steps necessary to comply with the terms of the settlement agreement, and informed the Respondent that it was required to notify Region 12 in writing by no later than March 27, 2017, as to what steps it had taken to comply. Subsequently, the Respondent returned to the Regional Office the Certification of Compliance (Part One). On that form, the Respondent indicated that notices were posted on March 24, 2017, but it failed to set forth the specific locations of posting, as required by that form. The Respondent also returned the Certification of Compliance (Part Two), which requests information about the steps that the Respondent has taken to comply with the other affirmative provisions of the settlement agreement. Although the Respondent signed that form, it did not provide the requested information.

On April 6, 2017, the Acting Regional Director, by email and certified mail, advised the Respondent that it had not complied with the settlement agreement because it had failed to send to Region 12 checks for the employees remedying the unilateral changes, and had failed to properly complete part two of the Certification of Compliance. The letter further advised the Respondent that if its noncompliance was not cured by April 20, 2017, the Regional Director would reissue the complaint that was

[1] The Respondent initially submitted a document as an answer on July 13, 2016, which was deemed insufficient because it did not specifically admit or deny the allegations of the complaint. The Respondent was notified of these defects and it then requested and was granted permission to file an untimely answer, which it did on July 22, 2016.

previously issued on June 30, 2016, and that it may then file a motion for default judgment with the Board. The Respondent failed to comply.[2]

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on May 2, 2017, the General Counsel reissued the complaint. On May 3, 2017, the General Counsel filed a Motion for Default Judgment with the Board, and, on May 4, 2017, the General Counsel filed a Corrected Motion for Default Judgment. On May 17, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to pay the amounts provided for in the settlement agreement or otherwise comply with the terms of the settlement agreement. Therefore, the General Counsel seeks an order requiring the Respondent to take the following affirmative action:[3] (1) upon request of the Union, rescind the October 1, 2015 health insurance benefits changes and restore the preexisting benefits; (2) reimburse, with interest, the employees named in the Appendix to the settlement agreement for medical expenses incurred as a result of the Respondent's unilateral changes to their health insurance in the amounts set forth in the Appendix; (3) bargain with the Union and put in writing and sign any agreement reached with respect to wages, hours, and other terms and conditions of employment for the unit employees. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and all of the allegations in the reissued complaint are true.[4] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, The Nursing Center at University Village (Respondent Nursing) has been a Florida corporation with an office and place of business located at 12250 N. 22nd Street, Tampa, Florida (Tampa, Florida facility), and has been engaged in the operation of a skilled nursing facility providing long-term healthcare and rehabilitative services to residents.

During the 12 months preceding the issuance of the complaint, Respondent Nursing, in conducting its business operations described above, derived gross revenues in excess of $100,000, and purchased and received at its Tampa, Florida facility goods valued in excess of $50,000 directly from points outside the State of Florida.

We find that Respondent Nursing is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, The Inn at University Village (Respondent Inn) has been a Florida corporation with an office and place of business located at 12250 N. 22nd Street, Tampa, Florida (Tampa, Florida facility), and has been engaged in the operation of an assisted living facility, providing assistance with daily living activities to residents.

During the 12 months preceding the issuance of the complaint, Respondent Inn, in conducting its business operations described above, derived gross revenues in excess of $250,000, and purchased and received at its Tampa, Florida facility goods valued in excess of $50,000 directly from points outside the State of Florida.

We find that Respondent Inn is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent Nursing and Respondent Inn have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations within the same continuing care retirement community; and have held themselves out to the public as a single-integrated business enterprise.

[2] The motion for default judgment indicates that the April 6, 2017, letter was subsequently returned as "unclaimed" by the Postal Service to the Regional Office. However, it is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc*., 339 NLRB 247, 247 fn. 2 (2003).

[3] The General Counsel also seeks an order that the Respondent cease and desist from its unfair labor practices as set forth in the Notice to Employees attached to the settlement agreement. Because that notice encompasses the Respondent's obligation to cease and desist and the notice was apparently posted, we need not include a cease-and-desist order here. In this regard, we note that the General Counsel does not assert that the Notice to Employees was not appropriately posted in accordance with the settlement despite its failure to fully complete part one of the Certification of Compliance and does not seek an affirmative notice-posting remedy. Accordingly, we do not order notice-posting here. See, e.g., *Alaris at Hamilton Park Health Care Center*, 366 NLRB No. 90, slip op. at 3 fn. 4 (2018).

[4] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

Based on their operations described above, Respondent Nursing and Respondent Inn constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jeannette Baltzly	Skilled Nursing Facility Administrator
Sandra Dinero	Human Resources Director, University Village
Marc Flores	Executive Director
Douglas Klinowski	Chief Executive Officer
Nicole Maragh	Director of Human Resources
Larry Prescott	Assisted Living Facility Administrator

At all material times, the following employees of the Respondent (the unit), have constituted a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All non-supervisory associates employed at The Nursing Center at University Village (recognizing that licensed nurses are required by Florida statute to have certain supervisory responsibilities and training) and The Inn at University Village, excluding guards, supervisors, and confidential associates and associates working less than fifteen (15) hours per pay period.

Since about 2004, a more precise date being presently unknown, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from February 1, 2013, to December 31, 2015, and which was extended to February 29, 2016.

At all times since about 2004, a more precise date being presently unknown, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About September 4, 2015, the Respondent announced to employees in the unit that open enrollment for new health care insurance benefits of employees in the unit that were to be implemented on or about October 1, 2015, would be held on or about September 11, 2015.

About October 1, 2015, the Respondent implemented, and since then has maintained, new health insurance benefits for unit employees.

The subject set forth above relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct or with respect to the effects of this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 12 on March 7, 2017. Accordingly, we shall order the Respondent to make the unit employees whole for the losses they suffered because of the unlawful unilateral changes to their health insurance coverage, by paying the amounts listed in the Appendix to the settlement agreement, plus interest accrued to the date of payment,[5] at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). We shall also order the Respondent to comply with the other settlement provisions, including the provisions requiring the Respondent to: rescind, upon request of the Union, the health insurance benefits changes that were implemented on October 1, 2015, and restore the health insurance benefits that existed immediately preceding the implementation of those changes; bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit concerning wages, hours of work, and other terms and conditions of employment and embody any

[5] See *Performance Cleaning Group*, 360 NLRB No. 99, slip op. at 3 (2014) (not reported in Board volumes).

understanding in a signed agreement; and notify the Regional Director in writing of the steps the Respondent has taken to comply with the settlement.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations," including backpay beyond that specified in the agreement.[6] However, in his Motion for Default Judgment, the General Counsel has not requested a "full remedy," and we will not, sua sponte, order one.[7]

ORDER

The National Labor Relations Board orders that the Respondent, TR & SNF, Inc. d/b/a The Nursing Center at University Village and TALF, Inc. d/b/a The Inn at University Village, Tampa, Florida, a single employer, its officers, agents, successors, and assigns shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Upon request of the Union, rescind the health insurance benefits changes that were implemented with respect to unit employees on October 1, 2015, and restore the health insurance benefits that existed immediately preceding the implementation of those changes.

2. Make whole the employees named in the Appendix to the settlement agreement for any loss of earnings and other benefits suffered as a result of the changes to their health insurance benefits on October 1, 2105, by payment to each of them of the backpay and interest amounts shown in the Appendix, with additional interest accrued to the date of payment. The total amount due under the settlement agreement, before additional interest is calculated, is $53,325.06.

3. Bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit, concerning wages, hours of work, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

> All non-supervisory associates employed at The Nursing Center at University Village (recognizing that licensed nurses are required by Florida statute to have certain supervisory responsibilities and training) and The Inn at University Village, excluding guards, supervisors, and confidential associates and associates working less than fifteen (15) hours per pay period.

4. Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 29, 2018

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[6] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations."

[7] See, e.g., *Benchmark Mechanical, Inc*., 348 NLRB 576 (2006). In his Motion for Default Judgment, the General Counsel states that the Respondent "failed to pay employees the amounts owed *or demonstrate compliance with the other terms of the Agreement*," and requests, among other things, that the Board order the Respondent to "cease and desist from its unfair labor practices *as set forth in the Notice to Employees attached to the Settlement Agreement*" and to "reimburs[e] employees for medical expenses and interest amounts *as provided for in the Settlement Agreement*." (Emphasis added.) In these circumstances, we construe the General Counsel's motion as a request to enforce the unmet terms of the settlement agreement, and not as a request for a "full remedy." See *Perkins Management Services*, 365 NLRB No. 90 (2017) (construing General Counsel's motion for default judgment to seek enforcement of unmet settlement terms); see also *Pittsburgh Logistics Systems, Inc. d/b/a PLS Logistics Services*, 366 NLRB No. 36, slip op. at 2 fn. 4 (2018) (construing General Counsel's statement, made in motion for default judgment, that respondent had failed to demonstrate compliance with settlement agreement as request to enforce unmet terms of settlement agreement).